

**STATE OF INDIANA
BEFORE THE INDIANA ALCOHOL AND TOBACCO COMMISSION**

IN THE MATTER OF)	
THE PERMIT OF:)	
)	
PARALLAX MANAGEMENT)	Permit No. RR45-01571
CORPORATION)	
d/b/a RISING SUN)	
9148 EAST MELTON ROAD)	
GARY, INDIANA 46403)	
)	
Applicant.)	

**PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. BACKGROUND OF THE CASE

The Applicant, Parallax Management Corporation, d/b/a Rising Sun, 9148 East Melton Road, Gary, Indiana 46403, (the “Applicant”) is the Applicant for renewal of an Indiana Alcohol and Tobacco Commission (“ATC”) Type-210 permit, #RR45-01571.¹ The Applicant filed its Application, which was assigned to the Alcoholic Beverage Board of Lake County (the “LB”) for review. The LB held a hearing on February 1, 2005, and recommended the denial of the renewal of the permit by a vote of 4-0.

The Applicant filed a timely notice of appeal and the appeal was assigned to ATC Hearing Judge U-Jung Choe (the “HJ”). An appeal hearing was held on October 4, 2006. The Applicant was represented by counsel, Stephen Brenman, and no remonstrators appeared either in person or by counsel for the hearing. Witnesses were sworn, evidence was heard and the matter was taken under advisement. The HJ now tenders her Proposed Findings of Fact and Conclusions of Law to the ATC for its consideration.

II. EVIDENCE BEFORE THE LOCAL BOARD

- A. The following individuals testified before the LB in favor of the Applicant in this cause:
1. Michael Back: Michael Back, attorney for the Applicant, testified that the Applicant has been in operation, with a liquor license, for in excess of thirty years; that ownership, management and security personnel are present at the Applicant's establishment at all times; and that the Applicant has been issued one citation in the past five (5) years, for indecent exposure. (LB Tr. 3, 4). Mr. Back stated that neither the Applicant nor its attorneys were afforded the opportunity to review a list of alleged police

¹ Liquor, Beer and Wine Retailer (Restaurant) in an incorporated area. See, IC 7.1-3-20-9 and 7.1-3-20-10.

runs to the establishment produced by the remonstrators, nor did they know whether the list was accurate. (LB Tr. 11). Mr. Back added that there has never been a charge of prostitution at the permit premises; only a single charge of public indecency, and that the Applicant has actually been commended by the city of Gary for its lack of violations that have occurred at the premises as opposed to the other establishments in the area. (LB Tr. 13, 16).

2. Sharon Hill: Sharon Hill testified that she has been the General Manager of the Applicant for the past five (5) years. (LB Tr. 4). Ms. Hill stated that after the Applicant was cited for indecent exposure, it implemented several changes at the establishment so that the dancers remain in view of the DJs at all times and remain properly covered. Ms. Hill also stated that the Applicant has a no-touch policy; that it conducts drug searches frequently at the establishment; and that no weapons of any type are allowed on the premises. (LB Tr. 4).

Ms. Hill stated that half of the police calls to the permit premises were made by her, because prostitutes from the establishment next door would loiter in the Applicant's parking lot. (LB Tr. 14). Ms. Hill stated that she has also called the police to remove customers who were caught taking drugs at the permit premises, and for gunshots that she could hear coming from the establishment next door. (LB Tr. 14-15). Ms. Hill testified that the Applicant has put a fence up in the parking lot, as well as lighting and four (4) security cameras in an attempt to thwart criminal activity. (LB Tr. 15).

B. The following individuals testified before the LB against the Applicant in this cause:

1. Barbara Sherman: Barbara Sherman testified that she is a member of the Liquor Coalition, which is a division of the Miller Citizens Corporation. (LB Tr. 5). Ms. Sherman stated that, in addition to the indecent exposure violation, the Applicant has had numerous police calls to the premises for stabbings and shootings, and that in 2003 there were over 15 police calls to the permit premises. (LB Tr. 5). Ms. Sherman testified that there have been some serious shootings at the establishment, and that her organization represents approximately ten thousand (10,000) people in the community. (LB Tr. 5).

2. Mary Krusas: Mary Krusas testified that she is the First District Councilperson for the City of Gary. (LB Tr. 7). Ms. Krusas stated that her constituents

are generally opposed to adult entertainment businesses in their area. (LB Tr. 7). Ms. Krusas also claimed that the Applicant is not of good character and reputation because of the police calls that were made to the Applicant's location. (LB Tr. 8). Ms. Krusas testified that there were twenty-four (24) police calls to the establishment in 2002, nineteen (19) in 2003 and fifteen (15) in 2004, and that the calls ranged from alarm calls to shots fired to theft and parking violations, in addition to other reasons. (LB Tr. 8). Furthermore, Ms. Krusas added that the Applicant's business is a nuisance because of the type of clientele it attracts. (LB Tr. 9).

C. No exhibits were introduced before the LB by the Applicant or the Remonstrators.

D. The following exhibit was introduced before the HJ in favor of the Applicant:

Exhibit 1; Appellant's Administrative Review Brochure.

III. EVIDENCE BEFORE THE ATC

A. The following individuals testified before the ATC in favor of the Applicant in this cause:

1. John Childress: John Childress testified that he is one of the owners of and manager of the Applicant, along with John Strom and William Strom. (Tr. 11-12). Mr. Childress stated that neither he nor any of the other owners have ever been charged with a misdemeanor or a felony, and that the Applicant has never been charged with any violation of the municipal codes, or any other local, city or state violations other than the public indecency citation which was dismissed. (Tr. 13, 16). Mr. Childress stated that he has called law enforcement to the permit premises in reference to some gang members who caused a disturbance in 2003, and who shot at the building after being escorted from the premises, injuring one of the security personnel. (Tr. 22). Mr. Childress testified that the Applicant has installed a total of thirty (30) security cameras, enabling him to see virtually all areas of the bar and the parking lot. (Tr. 23). Mr. Childress testified that security policies have been in place since the day they opened, and that all employees are required to acknowledge these policies with their signature. (Tr. 25). Mr. Childress also testified that most of the police calls to the premises were initiated by the Applicant. (Tr. 25).

3. Aaron Casper: Aaron Casper testified that he has been head of security for the Applicant for approximately six (6) months. (Tr. 26) He stated that his primary

responsibilities include securing the front door, including checking identification and scanning all patron with a metal detector. (Tr. 26, 27). Mr. Casper testified that he has three (3) security guards employed under him, and that their hours fluctuate depending on the day and the crowd. (Tr. 32). In explaining the circumstances surrounding the public indecency violation, Mr. Casper stated that dancer who was responsible was immediately terminated. (Tr. 33).

4. Cecil Messer: Cecil Messer testified that he is a general contractor who performs general maintenance at the premises, including plumbing, code compliance and electrical work. (Tr. 34).

5. Richard Soohey: Richard Soohey testified that he is employed as a financial consultant; that he has known Mr. Childress for thirty-two (32) years; and that Mr. Childress has a very high reputation for decency and law obedience. (Tr. 39-40) Mr. Soohey stated that the Applicant is a very nice, clean establishment, and that Mr. Childress is completely trustworthy. (Tr. 40-41).

IV. FINDINGS OF FACT

1. The Applicant is the Applicant for renewal of an ATC Type-210 permit, #RR45-01571.² (LB Hearing; ATC File).

2. The Applicant was issued a civil citation by the Indiana State Excise Police for one count of public indecency which occurred on October 26, 2003. (ATC File).

3. Following an adverse finding against the Applicant by the ATC, the matter was appealed to the Superior Court of Lake County. Subsequently, the violation was remanded to the ATC, and was thereafter dismissed by the ATC with prejudice. (ATC File).

4. Based on the dismissal, the Applicant has no record of any violations on file with the ATC. (ATC File).

5. Subsequent to the citation issued with regard to the October 26, 2003 incident, the Applicant made extensive improvements to the licensed premises including additional security personnel and security cameras. (LB hearing and ATC appeal hearing).

² Liquor, Beer and Wine Retailer (Restaurant) in an incorporated area. *See*, IC 7.1-3-20-9 and 7.1-3-20-10.

6. The Applicant has never received any complaints from the neighbors regarding the operation of the licensed premises. (ATC Appeal Hearing).

7. The Applicant has submitted numerous petitions signed by residents of Gary and neighboring communities attesting to the Applicant's reputation for decency, law obedience, good moral character and repute within the community. (ATC Appeal Hearing).

8. The Applicant maintains a reputation for decency and law obedience, and is of good moral character and good repute in the community in which it conducts its business. (Ind. Code § 7.1-3-9-10; 905 IAC 1-27-1; Petitions; ATC Appeal Hearing).

9. The Applicant has not allowed the licensed premises to become a public nuisance under the provisions of 905 IAC 1-27-2 and/or Ind. Code § 7.1-2-6-1 et seq., or the scene of acts or conduct which are prohibited by the Indiana Penal Code or by the criminal laws of the United States. (Ind. Code § 7.1-2-6-1; 905 IAC 1-27-2; ATC File; ATC Appeal Hearing).

10. There is insufficient evidence that the Applicant is not in substantial compliance with state or federal law or ATC rules and regulations; therefore, the Applicant should not be subject to a denial of the permit renewal based solely on the previously dismissed citation. (Ind. Code § 7.1-3-23-5; ATC File; See also *Hanley v. Eastern Indiana Investment Corporation*, 706 N.E.2d 576 (Ind. Ct. App. 1999)).

12. The Applicant has not ceased to possess any of the qualifications (including alteration or cessation of the particular business or type of business then engaged in, which qualifies him or her to hold the permit) required for issuance or renewal of the permit. (Ind. Code § 7.1-3-23-12; ATC File).

13. The Applicant has fully disclosed all facts in respect to the location of the licensed premises for which the permit renewal is applied. (Ind. Code § 7.1-3-23-13; ATC File).

14. Any Finding of Fact may be considered a Conclusion of Law if the context so warrants.

V. CONCLUSIONS OF LAW

1. The Applicant's record before the ATC, consisting of no prior incidents, other than one count of public indecency which was dismissed, does not disqualify the

Applicant from renewal of its permit. (See *Hanley v. Eastern Indiana Investment Corporation*, 706 N.E.2d 576 (Ind. Ct. App. 1999); *Indiana Alcoholic Beverage Commission v. River Road Lounge*, 590 N.E.2d 656 (1992)).

3. The Applicant is a fit and proper applicant, has maintained a reputation for decency and law obedience, and is well qualified to hold and renew an alcoholic beverage permit under Indiana law. (905 IAC 1-27-1 and I.C. 7.1-3-9-10).

4. The Applicant is not disqualified from holding and/or renewing an ATC liquor, beer and wine retailer (restaurant) permit. (I.C. 7.1-3-4-2; I.C. 7.1-3-5-2 and I.C. 7.1-3-15-2).

5. All laws shall be general and administered with uniform application throughout the state. (*Ind. Constitution, Article 4, Section 23*; See also, *Indiana Alcoholic Beverage Commission v. Osco Drug*, 431 N.E.2d 823, 830 (Ind. Ct. App. 1982)).

6. The LB denied this Application for renewal without sufficient evidence that would support a finding that this permit should not be renewed. (LB hearing).

7. A local board's recommendation is clearly erroneous when there is a lack of substantial evidence to support the recommendation. (I.C. 7.1-3-19-11).

8. The ATC may decline to follow the recommendation of a local board where the recommendation is not based upon substantial evidence. *Id.*

9. The LB failed to apply the requisite and/or applicable standards and provisions of 905 IAC 1-27-1 *et. seq.*, in determining whether the renewal Application of the Applicant should be recommended for approval. (LB hearing; ATC hearing; Applicant's exhibits).

11. The Applicant has submitted substantial evidence that it is qualified to hold and renew an ATC Type-210 restaurant liquor, beer and wine permit; there is substantial evidence of support of this permit by the general population in the area who frequent and who are in favor of the renewal of this permit; and, the evidence is with the Applicant and against the remonstrators. (LB hearing and ATC appeal hearing).

12. In determining a permittee's eligibility to renew a permit, particularly whether the permittee is of good moral character and of good repute, the ATC shall consider whether acts or conduct of the permittee or his employees or agents would constitute action or conduct prohibited by the Indiana Penal Code (I.C. 35-41-1-1 *et seq.*),

or a criminal offense under the laws of the United States. 905 IAC 1-27-1.

13. In determining a permittee's eligibility to renew or continue to hold a permit the ATC may also consider the esteem in which the permittee is held by members of his community, and such assessment of his character as may reasonably be inferred from police reports, evidence admitted in court and ATC proceedings, information contained in public records and other sources of information as permitted by I.C. 7.1-3-19-8 and I.C. 7.1-3-19-10. 905 IAC 1-27-1.

15. A "public nuisance" is defined as a place, building or manner of conducting business in violation of law or a rule or regulation of the ATC. *Ind. Code* § 7.1-2-6-1 *et seq.*

16. No proceedings have been filed in any court of law or before the ATC to declare the Applicant or the licensed premises a public nuisance, nor has any judicial or administrative determination ever been made declaring the Applicant or the licensed premises a public nuisance.

17. No nexus was established during the LB proceedings or the ATC Appeal hearing between the Applicant or the "licensed premises" and police runs, criminal activity, municipal code violations, after-hours operations or complaints of residents.

18. The ATC shall follow the recommendation of a majority of the members of a local board to grant or deny an Application for a retailer's or dealer's permit of any type unless, after the ATC's *de novo* review of the recommendation, the ATC determines that to follow the recommendation would be:

- (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
- (b) contrary to a constitutional right, power, privilege, or immunity;
- (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights;
- (d) without observance of procedure required by law; or
- (e) unsupported by substantial evidence.

Ind. Code § 7.1-3-19-11.

19. The LB's action in recommending the denial of the Application for the renewal of the permit of the Applicant in this matter was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to

constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or rights; (d) without observance of procedure required by law; and/or (e) unsupported by substantial evidence.

20. A renewal application may be denied for any one of the following reasons: (1) The permittee does not maintain a high and fine reputation, and is not of good moral character and good repute in the community; (2) The permittee has allowed the licensed premises to become a public nuisance, or the scene of acts or conduct which are prohibited by the criminal laws of Indiana or the United States; (3) The permittee violates or refuses to comply with a provision or a rule or regulation of the Commission; (4) The permittee has ceased to possess any of the qualifications, including alteration or cessation of the particular business or type of business then engaged in, which qualifies him to hold that particular type of permit; or (5) The applicant has not fully disclosed the true facts in respect to the location of the permit premises for which the permit is applied. 905 IAC 1-27-1, -2, -3.

21. The evidence presented to the LB was insufficient to support the conclusion that the Applicant does not maintain a high and fine reputation; that it has allowed the licensed premises to become a public nuisance, or the scene of acts or conduct which are prohibited by the criminal laws of Indiana or the United States; that the Applicant has violated or refused to comply with any provision or rule or regulation of the Commission; that the Applicant has ceased to possess any of the qualifications, including alteration or cessation of the particular business or type of business then engaged in, which qualifies it to hold its Type-210 permit; or that the Applicant has failed to disclose the true facts in respect to the location of the permit premises for which the permit is applied.

22. Any Conclusion of Law may be considered a Finding of Fact if the context so warrants.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the recommendation of the LB to deny the renewal of the permit of the Applicant in this matter was (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) contrary to constitutional right, power, privilege, or immunity; (c) in excess of, or contrary to, statutory jurisdiction, authority, limitations or

rights; (d) without observance of procedure required by law; and/or (e) unsupported by substantial evidence, and cannot be sustained.

It is further Ordered, Adjudged and Decreed that the evidence adduced at the ATC Appeal hearing was in favor of the Applicant and against the recommendation of the LB.

It is finally Ordered, Adjudged and Decreed that the Appeal of the Applicant, Parallax Management Corporation, d/b/a Rising Sun, 9148 East Melton Road, Gary, Indiana 46403, is granted and approved, the recommendation of the LB in this matter is reversed, and the permit applied for herein is hereby RENEWED.

DATED: _____

U-Jung Choe, Hearing Judge